

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

EVA MADER, DANA RUSH, ROSS )  
DAY, and a class of similarly-situated ) NO. 98-2-30850-8 SEA  
individuals, )  
 )  
Plaintiffs, ) NOTICE OF PROPOSED CLASS  
 ) ACTION SETTLEMENT  
v. )  
 )  
STATE OF WASHINGTON, STATE )  
BOARD FOR COMMUNITY AND )  
TECHNICAL COLLEGES, and )  
DEPARTMENT OF RETIREMENT )  
SYSTEMS, )  
 )  
Defendants. )

**TO:** All individuals who (A) worked for the State of Washington as a part-time community college instructor during any time from October 1, 1977 through the present *or* the individual worked for the State of Washington as a part-time technical college instructor during any time from September 1, 1991 through the present; *and* (B) meet one of the following three requirements:

- (1) the individual is or was enrolled in a Teachers Retirement System (TRS) plan;  
or
- (2) the individual worked 50% or more Full-Time Equivalency for at least two quarters in an instructional year and was not enrolled in any retirement plan; or
- (3) the individual worked 50% or more Full-Time Equivalency for at least two quarters in an instructional year and the individual is or was enrolled in the TIAA-CREF Plan and either (a) contributions were not made at the commencement of the second quarter of 50% or more Full-Time Equivalency

1 or (b) while so enrolled, salaries at one or more colleges were not subject to  
2 TIAA-CREF Plan contributions.

3 The State of Washington and counsel for the plaintiffs have agreed to settle a class  
4 action lawsuit brought by three individuals (the “plaintiffs”) on behalf of similarly-situated  
5 employees (“class members”) against the State of Washington, the State Board for  
6 Community and Technical Colleges, and the Department of Retirement Systems (collectively  
7 referred to as “the State”). The lawsuit alleged that since 1991 the State has failed to enroll  
8 part-time community and technical college instructors in the TIAA-CREF retirement plan  
9 when they worked half-time or more for a sufficient length of time because the State counted  
10 only in-class teaching hours toward retirement benefits, rather than the State counting *both* in-  
11 class *and* out-of-class work hours of part-time instructors toward retirement benefits. The  
12 lawsuit also claimed that the State failed to provide some part-time community college  
13 instructors from 1977 to present (and part-time technical college instructors from 1991 to  
14 present) the correct service credit in the Teachers Retirement System (TRS) because the State  
15 counted only the in-class teaching hours of part-time instructors toward retirement benefits,  
16 rather than counting *both* in-class *and* out-of-class work hours of part-time instructors. The  
17 plaintiffs also claimed that those who participated in TRS were not provided with the option  
18 of transferring into TIAA/CREF. The plaintiffs sought monetary and other relief for the  
19 denial of retirement benefits. The State denies the plaintiffs’ claims, but nevertheless has  
20 agreed to a settlement which resolve these claims completely. The Washington State  
21 Legislature appropriated funding for the Settlement Agreement.  
22

23 **1. The Affected Class.**

24 The class is defined as:  
25

1 All individuals who (A) worked for the State of Washington as a part-time  
2 community college instructor during any time from October 1, 1977 through the  
3 present *or* the individual worked for the State of Washington as a part-time technical  
4 college instructor during any time from September 1, 1991 through the present; *and*  
5 (B) meet one of the following three requirements:

- 6 (1) the individual is or was enrolled in a Teachers Retirement System (TRS) plan;  
7 or  
8 (2) the individual worked 50% or more Full-Time Equivalency for at least two  
9 quarters in an instructional year and was not enrolled in any retirement plan; or  
10 (3) the individual worked 50% or more Full-Time Equivalency for at least two  
11 quarters in an instructional year and the individual is or was enrolled in the  
12 TIAA-CREF Plan and either (a) contributions were not made at the  
13 commencement of the second quarter of 50% or more Full-Time Equivalency  
14 or (b) while so enrolled, salaries at one or more colleges were not subject to  
15 TIAA-CREF Plan contributions.

## 16 **2. Reasons for Settlement.**

17 After extensive litigation, counsel for the plaintiffs ("Class Counsel") believe this  
18 lawsuit should be settled because the terms of the settlement are fair, reasonable, and provide  
19 substantial benefits to the class. Class Counsel has analyzed the benefits of the settlement, the  
20 risks involved with litigation of the case, as well as the expense and length of continued  
21 proceedings necessary to prosecute this action to a trial and possible appeals. Class Counsel  
22 have concluded that the many risks plaintiffs would face with continued litigation include, but  
23 are not limited to, whether liability would be established, whether the claims would be limited  
24 in time due to defenses concerning the statutes of limitations, and the proper measure of  
25 damages. One cannot predict with certainty how the Court would rule on these issues, and  
class counsel believe there is significant risk to the class if litigation continued. Class counsel  
thus strongly recommend this settlement to the class members and believe it is fair and  
reasonable.

1 The State has agreed to the settlement terms to avoid further litigation expenses and  
2 the risks attendant to such litigation. The State does not, however, admit to any wrongdoing  
3 or liability by entering this settlement.

4 **3. General Features of the Settlement.**

5 **a. Omitted Contributions and Gains in TIAA-CREF Plan.**

6 Plaintiffs' claims in the lawsuit relating to the TIAA-CREF retirement plan extend  
7 back to September, 1990. The Settlement Agreement provides that the State will make \$8.3  
8 million in omitted contributions and gains to retirement accounts administered by TIAA-  
9 CREF for the benefit of eligible class members (*i.e.*, the "Qualifying Class Members").  
10 Whether a class member is a "Qualifying Class Member" eligible for a *pro rata* share of the  
11 \$8.3 million in omitted contributions and gains shall be determined based on the class  
12 member's length of service and percentage of full-time workload as set forth in the Settlement  
13 Agreement at paragraphs 51-58. A Qualifying Class Member, for the purpose of receiving a  
14 *pro rata* contribution of omitted TIAA-CREF Plan contribution and gains, is an individual  
15 who meets the following requirements:  
16

17 (a) the individual is a Class Member;

18 (b) the Class Member is not a retiree from a State or a Washington  
19 municipal retirement plan (other than the TIAA-CREF Plan);

20 (c) the individual worked at 50% or more FTE in two or more Quarters in  
21 an instructional year for two or more consecutive instructional years. The 50% or more FTE  
22 can be at a combination of two or more colleges;

23 (d) only Quarters a Class Member worked in or after the Fall Quarter of  
24 1990 shall count because that is when the State Board amended the TIAA-CREF Plan and the  
25

1 Plaintiffs claim they became eligible for the plan;

2 (e) the last Quarter that may be counted is the Spring Quarter of 2000  
3 because the State Board began enrolling part-time 50% or more FTE faculty members during  
4 the 1999-2000 Instructional Year;

5 (f) the only Quarters that count are those in which a Class Member's  
6 retirement code in the State Board's database is: (1) blank, (2) contains the designation "NE,"  
7 which means "not eligible," (3) or indicates the worker participated in TRS Plan 2, TRS  
8 Plan 3, or TIAA-CREF;

9 (g) with respect to Quarters worked by participants in TRS Plans 2 or 3,  
10 referenced in subparagraph (f) above, the section below entitled "TRS Adjustments" contains  
11 the prerequisites to counting Quarters for the purpose of receiving *pro rata* TIAA-CREF  
12 contributions.  
13

14 Even though the Quarters worked at 50% or more FTE of Class Members while in  
15 TIAA-CREF will count in determining whether Class Members are Qualifying Class  
16 Members, Class Members will not receive any *pro rata* omitted contributions and gains for  
17 their service when a college makes TIAA-CREF Plan contributions on their behalf. Instead,  
18 the purpose of including that time is to compensate Qualifying Class Members if they worked  
19 at *additional* colleges that did *not* make TIAA-CREF Plan contributions on their behalf.  
20

21 Any time that Class Members worked and were members of TRS Plan 1 will not count  
22 towards determining eligibility to receive *pro rata* omitted contributions and gains in the  
23 TIAA-CREF Plan. Such Class Members are entitled to receive adjusted service credit in TRS  
24 Plan 1, if appropriate, under the terms of this Agreement.  
25

1                   **b.       TRS Members.**

2               Plaintiffs' claims in the litigation relating to TRS extend back to October, 1977. There  
3 are class members who are members of TRS whose service credit is understated because only  
4 their in-class teaching hours were counted toward TRS. Absent evidence of actual hours  
5 worked, the State shall adjust the service credit of these class members according to the  
6 method set forth in WAC 415-112-335 (1997 ed.), which counts *both* in-class *and* out of class  
7 work hours of part-time instructors towards retirement benefits, upon the class member's  
8 application to the Department of Retirement Systems (DRS). This will result in increased  
9 service credit, and greater retirement benefits, for some class members.  
10

11              There are also class members who erroneously received no service credit in TRS for  
12 work since October, 1977. These class members have a right to now purchase additional  
13 service credit by paying the employee contribution that they would have had to pay on the  
14 dates they worked plus interest at the pertinent rate of the particular TRS Plan. This will  
15 result in increased service credit, and greater retirement benefits, for some class members.  
16 These class members will need to contact DRS to purchase additional service credit under the  
17 terms of the settlement agreement.

18              TRS Plans 2 and 3 Members who meet the eligibility criteria as Qualifying Class  
19 Members (see *supra*), but who were not offered an opportunity to participate in TIAA-CREF  
20 during the period from Fall Quarter 1990 through Spring Quarter 2000, shall be offered an  
21 opportunity to retroactively choose between (a) remaining in TRS Plans (and potentially  
22 applying for a service credit adjustment) and (b) participating in the TIAA-CREF Plan. The  
23 opportunity to participate in TIAA-CREF shall be effective on the Class Member's first  
24 Contributing Quarter. Each TRS Member who elects and meets the requirements for this  
25

1 option shall receive a *pro rata* contribution under the formula in the Settlement Agreement.  
2 For all purposes such TRS Members shall be treated as having made a retroactively effective  
3 election to participate in TIAA-CREF as of the Class Member's first Contributing Quarter and  
4 will thus forgo all TRS service credit from the beginning of that Contributing Quarter under  
5 procedures of the Department of Retirement Systems and shall be entitled to a refund or roll-  
6 over of their TRS Contributions.

7         The State shall determine which TRS Members are entitled to receive the option to  
8 retroactively participate in TIAA-CREF and provide notice of this option to those Class  
9 Members promptly after the Effective Date, with the goal of providing an adequate  
10 opportunity to make a choice and determine each Class Member's approximate *pro rata* share  
11 prior to the date set for payment of funds to TIAA-CREF. The form of such notice of this  
12 option and the procedures for making an election shall be determined by the parties and  
13 approved by the Court. Class Counsel will not participate in advising TRS Members of the  
14 advantages or disadvantages of the choices offered, but the Department of Retirement  
15 Systems may answer questions concerning this matter, such as the amount of TRS service  
16 credit that would be foregone.

17  
18                 **c.         Awards to Representative Plaintiffs.**

19         Plaintiffs Eva Mader, Dana Rush, and Ross Day are the representative plaintiffs who  
20 brought this lawsuit on behalf of themselves and the class members. Due to the representative  
21 plaintiffs' action in taking on risks and performing services that other class members rely  
22 upon, it is common for representative plaintiffs to receive "incentive awards." The Settlement  
23 Agreement here provides for a \$33,333.33 incentive payment to each of the three  
24 representative plaintiffs. The representative plaintiffs' participation in the litigation from  
25

1 1997 through 2002 has included, but was not limited to, investigation of the claims,  
2 commencement of the lawsuit, discovery matters, and assisting class counsel.

3 **d. Class Counsel's Attorney Fees and Costs.**

4 The State will pay Class Counsel \$3.6 million in attorney fees and costs for  
5 prosecuting the lawsuit. This amounts to 30% of the cash, not including the value of TRS  
6 service credit. This is based on the Washington Supreme Court decision in *Bowles v.*  
7 *Department of Retirement Systems*, 121 Wn.2d 52 (1993), which provides for an attorney fee  
8 award based on a reasonable percentage of the value of pension benefits recovered in a class  
9 action brought by public employees.  
10

11 **4. Conclusion.**

12 The foregoing is a brief summary of a lengthy Settlement Agreement. **The actual**  
13 **agreement determines your rights, not this summary.** Copies of the complete agreement  
14 may be obtained without charge by picking up copies at the Human Resource offices of the  
15 community and technical college districts. A copy of the Settlement Agreement may also be  
16 obtained from the State Board of Community and Technical Colleges' website,  
17 [www.sbctc.ctc.edu](http://www.sbctc.ctc.edu).

18 The Settlement Agreement is a product of extensive negotiation. The agreement is a  
19 result of compromise of disputed claims and does not constitute an admission of liability by  
20 the State.  
21

22 The Settlement Agreement is subject to final approval by the Court. By approval of  
23 the content of this notice, the Court expresses no opinion on the merits of the case or the  
24 amount and terms of the settlement. A hearing will be held in Judge Steven Scott's  
25 courtroom, W813 King County Courthouse, Third and James, 516 Third Avenue, Seattle, WA



1 98104, at 3:00 p.m. on July 25, 2002. You do not have to attend this hearing in order to  
2 receive the above-described benefits. If any class member has an objection to the proposed  
3 Settlement Agreement, the objection must be made **in writing (DO NOT TELEPHONE**  
4 **THE ATTORNEYS)** prior to 4:00 p.m. on July 11, 2002, by filing the original objection  
5 with the Clerk of the Court and by delivering copies of any such objections to the attorneys  
6 for both sides. Any statements in support of the proposed settlement may be submitted in the  
7 same manner as objections. An objection shall be filed as follows:  
8

9 **File Original Objections in Writing, Showing Case Name And Number (*Mader v.***  
10 ***State*, No. 98-2-30850-8 SEA), and Include Your Name, Address, and Telephone**  
11 **Number, With:**

12 **Clerk of Court**  
13 **6th Floor, King County Courthouse**  
14 **516 Third Avenue**  
15 **Seattle, WA 98104**

16 **Provides Copies of All Objections To Both Of the Following Offices:**

17 Lisa L. Sutton, Assistant Attorney General  
18 Glen A. Anderson, Assistant Attorney General  
19 Office of the Attorney General, Torts Division  
20 629 Woodland Square Loop SE, First Floor  
21 P.O. Box 40126  
22 Olympia, WA 98504-0126

Bendich, Stobaugh & Strong, P.C.  
900 Fourth Avenue, Suite 3800  
Seattle, WA 98164

23 DATED: May 21, 2002.

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HON. STEVEN SCOTT, JUDGE